

REMARKS

In response to a new ground of rejection entered under 35 U.S.C. § 101 by the Board of Patent Appeals and Interferences (“the Board”) in Ex Parte Wassom, Appeal 2008-4761 (decided February 25, 2009), applicants submit the foregoing amendments and the following remarks. Applicants ask that the forgoing amendments be entered and that this application pass to allowance.

Initially, applicants thank Supervisory Patent Examiner Lo for the courtesies extended to the undersigned during the telephone interview of April 13, 2009. Applicants understand that Examiner Tran is currently on leave, thus, in view of the approaching non-extendable deadline of April 25, 2009, applicants contacted Examiner Lo to discuss the amendments shown above. Examiner Lo indicated that the amendments were likely to advance prosecution by addressing the new ground of rejection, and that the Examiners would work with the undersigned if there are additional suggestions for addressing the new ground of rejection.

Claims 1-50 are pending, with claims 1, 28, 42 and 44 being independent. As discussed below, the amendments are believed to be “appropriate” amendments under section 1214.01(I) of the Manual of Patent Examining Procedure and, thus, the amendments should be entered.

A final rejection was issued in this application on July 25, 2005, rejecting claims 1-35 and 37-50 under 35 U.S.C. § 102 and claim 36 under 35 U.S.C. § 103. Applicants appealed claims 1-50 to the Board on October 25, 2005. On January 29, 2007, applicants responded to the Examiner’s Answer, and on February 14, 2009 an oral hearing was held. A decision reversing the 35 U.S.C. § 102 rejections of claims 1-35 and the 35 U.S.C. § 103 of claim 36 was made by the Board on February 25, 2009. See Ex Parte Wassom, Appeal 2008-4761 (decided February 25, 2009). Additionally, the Board entered a new ground of rejection for independent claim 1 under 35 U.S.C. § 101. See id. at pages 8-9.

Applicants believe that the amendment to claim 1 shown above addresses the concerns raised by the Board. Following a new ground of rejection by the Board, the application will be remanded to the Examiner for reconsideration if the applicant submits “an appropriate amendment” of the claims that have been rejected by the Board. See MPEP § 1214.01(I). An amendment is “appropriate” under the rules if it amends one or more of the claims rejected. See

id. As discussed above, the new ground of rejection pertains to claim 1. Because applicants have amended claim 1 to address the rejection set forth by the Board, applicants believe that the amendment is proper and should be entered and considered by the Examiner.

In conclusion, applicants ask that prosecution be reopened in this application pursuant to 37 C.F.R. § 41.50(b)(1) and that the foregoing amendments to claim 1 be entered to address the new ground of rejection for claim 1 that was raised under 35 U.S.C. § 101. Applicants submit that this case is in condition for allowance. Should any additional issues arise with respect to this application, the Examiner is encouraged to contact the undersigned by telephone.

Applicants have until April 25, 2009, which is two months from the date of the Board's decision, to submit amendments that address the new ground of rejection. See 37 C.F.R. § 41.50(b). Thus, applicants believe that the amendments are timely filed and that no fees are due at this time. Nonetheless, please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: April 24, 2009

  
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